

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to open a docket to implement the provisions of)	Case No. U-18326
Section 10ee of 2016 PA 341.)	
_____)	

At the March 28, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On April 20, 2017, 2016 PA 341 (Act 341), an act amending 1939 PA 3, will go into effect. Section 10ee of Act 341, MCL 460.10ee, governs the code of conduct applicable to utilities, as well as value-added programs and services offered by utilities or affiliated entities.

MCL 460.10ee(1) provides:

The commission shall establish a code of conduct that applies to all utilities. The code of conduct shall include, but is not limited to, measures to prevent cross-subsidization, preferential treatment, and, except as otherwise provided under this section, information sharing, between a utility's regulated electric, steam, or natural gas services and unregulated programs and services, whether those services are provided by the utility or the utility's affiliated entities.

As soon as practicable, the Commission will commence a rulemaking proceeding to address this directive. In the interim, the Code of Conduct established in Case No. U-12134 (Code of Conduct) remains in place. However, that code does not address several of the new measures

mandated by Section 10ee.¹ This order will provide guidance (and a docket) for utilities choosing to commence activities pursuant to Section 10ee.

MCL 460.10ee(4) requires a utility to notify the Commission of its intent to offer its customers a new value-added program or service before offering the program or service, but provides no other guidance. Utilities that intend to offer a program or service pursuant to Section 10ee shall notify the Commission no less than 30 days before offering the program or service to customers. Consistent with Section 10ee(6), the written notification shall provide the Commission with a description of the new program or service, including the personnel responsible for management of the program or service and their location, and how costs will be allocated to the unregulated program or service. A copy of the business plan for the new program or service shall be included with the notice. For the time being, such notifications shall be filed in this docket.

MCL 460.10ee(6)(c) and (15) each require utilities to submit an annual report. This is in addition to the annual report regarding complaints that is already required from electric utilities and alternative electric suppliers (AESs) under Section VII.C. of the Code of Conduct. Electric utilities and AESs may submit one annual report to the Commission (consolidating the information sought from utilities under all three provisions) on the date that they normally provide the existing annual report regarding complaints, and may continue to make that filing in Case No. U-12134. Natural gas and steam utilities affected by Section 10ee shall submit their annual reports no later than April 30 of each year, commencing in 2018, in this docket.

The Commission notes that MCL 460.10ee(10)(a) provides as follows:

(10) In marketing a value-added program or service offered under this section to the public, a utility shall do all of the following:

¹ The Commission notes that, to the extent that any of the provisions of Section 10ee conflict with the provisions of the Code of Conduct, Section 10ee prevails. All existing waivers to the Code of Conduct will remain in place.

(a) In the manner and to the extent allowed by commission rule or order, provide upon request to a provider of a similar program or service any lists of customers receiving regulated service that the utility provides to its value-added programs or services. The customer list shall be provided within 5 business days of the request on a nondiscriminatory basis. A new customer shall be added to the customer list within 1 business day of the date the customer requests to enroll in the program or service.

Thus, customer lists, as described in the statute, may be provided on request in “the manner and to the extent allowed by commission rule or order.” The Commission finds that any customer list provided pursuant to Section 10ee(10)(a) must comply with any existing data privacy tariff applicable to the affected utility.

Finally, electric utilities continue to have the ability to seek a waiver from the Code of Conduct. Utilities and AESs may also seek a waiver from any provision of this order. The request for a waiver may be filed in this docket or in a docket addressing the subject matter of the waiver.

THEREFORE, IT IS ORDERED that:

A. Utilities, as defined in MCL 460.10ee(16)(a), that intend to offer a program or service pursuant to MCL 460.10ee shall notify the Commission no less than 30 days before offering the program or service to customers by filing notification in this docket. The written notification shall provide the Commission with a description of the new program or service, including the personnel responsible for management of the program or service and their location, and how costs will be allocated to the unregulated program or service to ensure that there is no cross-subsidization between regulated and unregulated programs or services. A copy of the business plan for the new program or service shall be included.

B. Electric utilities and alternative electric suppliers may submit one annual report to the Commission (consolidating the information sought under the Code of Conduct issued in Case No. U-12134, and MCL 460.10ee(6)(c) and (15)) on the date that they normally provide the existing

annual report regarding complaints, and may continue to make that filing in Case No. U-12134.

Natural gas and steam utilities affected by MCL 460.10ee shall submit their annual reports no later than April 30 of each year, commencing in 2018, in this docket.

C. Utilities, as defined in MCL 460.10ee(16)(a), providing customer lists pursuant to MCL 460.10ee(10)(a) must comply with any existing data privacy tariffs applicable to the affected utility.

D. Utilities, as defined in MCL 460.10ee(16)(a), and alternative electric suppliers may seek a waiver from any provision of this order. The request for a waiver may be filed in this docket or in a docket addressing the subject matter of the waiver.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of March 28, 2017.

Kavita Kale, Executive Secretary